

REMARKS

In this paper, claim 1 has been amended to clarify the subject matter claimed. In view of the amendments to claim 1, claims 2-4 have been amended and new claim 25 has been added. Support for these amendments can be found, for example, in claims 1-4 as originally filed and on pages 1 and 6 of the originally-filed specification. Also in this paper, claim 22 has been amended to remove multi-dependency and to improve clarity; claims 19 and 24 have been amended to address matter of form and to improve clarity. Support for amendments to claim 19 can be found, for example, in original claim 19 and pages 6 and 8 of the originally-filed specification. Support for amendments to claim 22 can be found, for example, in original claim 22 and page 3 of the originally-filed specification. Support for amendments to claim 24 can be found, for example, in original claim 24 and pages 2-3 of the originally-filed specification. No new matter has been introduced by these amendments. Pursuant to MPEP § 706.07(h) and 37 CFR § 1.114, Applicants file herewith a Request for Continued Examination to reopen prosecution to have the amendments considered.

In the Final Office Action mailed July 20, 2009, claims 1, 2, 5, 6, 9-16, 18-20, and 22-24 have been rejected as allegedly being obvious under 35 U.S.C. § 103 in view of the combination of US 2004/0250459 ("Brinkman '459"), U.S. Patent No. 6,105,295 ("Brinkman '295"), and U.S. Patent No. 6,632,042 ("Liener Chin"). Claims 3, 4, and 21 have been rejected as obvious modifications under 35 U.S.C. § 103 in view of Brinkman '459. The Examiner has rejected claims 7 and 8 as obvious in view of the disclosure of Brinkman '459 in combination with Liener Chin. The Examiner has rejected claim 17 as obvious in view of the combination of Brinkman '459, Liener Chin, Brinkman '295, and US 4,773,175 ("Larsen").

Applicants have amended the claims solely to expedite prosecution. Together with the following remarks, Applicants respectfully request reconsideration and withdrawal of all rejections. In particular, Applicants strongly disagree with the 35 U.S.C. § 103(a) rejections because the primary reference (Brinkman '459) that the Examiner relied upon does not qualify as prior art. In addition, Applicants respectfully submit that the cited references, including Brinkman '459, do not teach or suggest all of the elements of Applicants' claims.

Brinkman '459 Does Not Qualify as Prior Art

The Examiner in the Final Office Action erroneously cited Brinkman '459 as prior art against the instant application under 35 U.S.C. § 103(a). Applicants respectfully submit that Brinkman '459 does not qualify as prior art because Brinkman '459 is not in the prior art under 35 U.S.C. §§ 102(a) or 102(b).

Brinkman '459 is not available as prior art under 35 U.S.C. § 102(a) because Brinkman '459 was not published before Applicants' priority date. Applicants claim priority to German patent application DE 10 2004 001 265.2 filed on January 8, 2004. Brinkman '459 published on December 16, 2004. As Applicants' priority date pre-dates Brinkman '459 publication date, Brinkman '459 is not available as prior art under U.S.C. § 102(a).

Brinkman '459 also fails to qualify as prior art under 35 U.S.C. § 102(b) because Brinkman '459 was not published more than one year prior to the U.S. application date of the instant application. Applicant's U.S. application date is January 7, 2005, which is the international filing date of PCT Application No. PCT/EP2005/000104. (See 35 U.S.C. § 363 and PCT Article 11, which provide that the date of the application in the U.S. of a national phase of a PCT application is the international filing of the PCT application.) As Brinkman '459 published on December 16, 2004, which fails to predate Applicants' U.S. filing date (January 7, 2005) by more than one year, Brinkman '459 does not qualify as prior art under 35 U.S.C. § 102(b).

For the foregoing reasons, Applicants respectfully submit that Brinkman '459 is not prior art against the instant application. Without Brinkman '459, all rejections under 35 U.S.C. § 103(a) are moot as the Examiner relied upon Brinkman '459 as the primary reference for each and every 35 U.S.C. § 103(a) rejection. Accordingly, Applicants respectfully request that all rejections under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Rejections Under 35 U.S.C. § 103(a)

Brinkman '459 is not prior art for reasons stated above. Even if Brinkman '459 were prior art, which Applicants strongly disagree, Brinkman '459, Brinkman '295, and Liener Chin, alone or in combination, fail to teach or suggest all of the elements of Applicants' independent claims 1 and 24.

With regard to claim 1, the three references combined do not teach or suggest (1) a strap for fastening, securing or clamping goods or person and (2) an insert having high tear strength. For example, Brinkman '459 and Brinkman '295 both teach label holders for displaying on merchandise shelves (see Brinkman '459 at paragraph [0001] and Brinkman '295 at Abstract). These label holders are attached to the shelf (elements 10, 11 in Fig. 1 of Brinkman '459; element 40 in Fig. 3 of Brinkman '295) and do not include any strap or means for fastening, securing or clamping goods or person. Liener Chin also fails to teach or suggest any strap or means for fastening, securing or clamping goods or person; instead, Liener Chin teaches sheet (element 350 in Fig. 4) protector pocket (element 304 in Fig. 4) having binder holes (element 320 in Fig. 4).

In addition, Brinkman '459, Brinkman '295, and Liener Chin combined also fail to teach or suggest Applicants' insert (in addition to the identification medium) having high tear strength. As Applicants explained in the specification, the insert having high tear strength "absorbs all of the tensile and bending forces acting on the information medium and prevents the various layers of the information medium from becoming damaged by these forces." Specification as originally filed at p. 3, third full paragraph. Furthermore, the insert having high tear strength allows that "Each identification medium may be selected without taking into account a specific strength required for permanent attachment, as it is protected from premature destruction by the insert having high tear strength." Specification as originally filed at p. 3, second full paragraph. In contrast, Brinkman '459 teaches "between front panel 24 and back panel 26 a cavity suitable for receiving labels" (Brinkman '459 at paragraph [0020]) without disclosing any insert in addition to the labels. Brinkman '295 teaches "a non-adhesive paper or plastic label 25 (see FIG. 6) to be received in the pocket 30 formed between the body panel 15 and the cover 20" (Brinkman '295 at col. 4, ll. 7-9) and also fails to teach or suggest any insert. While Liener Chin discloses a tabbed sheet 908 which "holds the photograph 904 in place in the pocket apparatus 910 so it does not slide around from side to side or become crooked" and "provides an attractive border for the photograph and protects the edges of the photograph from damage," Liener Chin does not teach or suggest any mechanical properties of the tabbed sheet, not to mention high tear strength.

With regard to claim 24, Brinkman '459, Brinkman '295, and Liener Chin combined also fail to teach or suggest at least: (1) means for fastening, securing or clamping goods or person and (2) an insert having high tear strength, for reasons stated above.

For at least the foregoing reasons, Brinkman '459, Brinkman '295, and Liener Chin combined fail to teach or suggest at least two claimed elements in each of the two independent claims 1 and 24. Claims 2-23 and 25 depend upon claim 1. Accordingly, Applicants respectfully request the obviousness rejection to claims 1-24 under 35 U.S.C. § 103(a) be withdrawn.

CONCLUSION

Applicants respectfully submit that all of the pending claims are in condition for allowance and requests early favorable action. If the Examiner believes a telephonic interview would expedite the prosecution of the present application, the Examiner is welcome to contact Applicants' Agent at the number below.

Respectfully submitted,

Date: January 20, 2010
Reg. No.: L0591

Tel. No.: (617) 526-9429
Fax No.: (617) 526-9899

/Fang Xie, Reg. No. L0591/
Fang Xie
Agent for the Applicants
Proskauer Rose LLP
One International Place
Boston, MA 02110